IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1688 OF 2004

Tikam Co-operative Housing
Society Ltd. Petitioner

vs.

Smt.Sangita B. Vanmali Respondent

Mr.C.P.Deogirikar for the petitioner.

Mr.Sanjeev Sawant for the respondent.

CORAM : S. A. BOBDE,J.

DATED : 19th October 2005

P.C.

Rule. Returnable forthwith.

2. Mr.Sanjeev Sawant, advocate waive service on behalf of the respondent.

3. By consent, rule is heard finally at this stage.

4. The petitioner-socieity is aggrieved by the order of the Maharashtra State Cooperative Appellate Court reversing the order of the Cooperative Court which had allowed the petitioner to amend its dispute. The petitioner-society had filed dispute against the respondent originally for recovery of the sum of Rs.24,710/-. It appears that pending the dispute, according to the society, the respondent committed more

defaults and owed an amount of Rs.79,316.50 on account of maintenance and the amount of Rs.1,18,173.69 calculated as per the provisions of the bye-laws of the society till 31.8.2002. As a result thereof, the petitioner-society applied for amendment of their original dispute to include the aforesaid claim and a further prayer that in default, the respondent be ordered to deliver possession of the flat in question since that is the only other mode of recovery.

5. This application for amendment was allowed by the Cooperative Court to prevent multiplicity of proceedings and having regard to the fact that defaults have committed pending the dispute. However, by the impugned order, the Revisional court has reversed this order interalia on the ground that the amendment would void the basic rule of the Code of Civil Procedure provided by Order 7 Rule 7. Order 7 Rule 7 of the Code of Civil Procedure reads as follows:

> "**7. Relief to be specifically stated. -** Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

6. It is difficult to comprehend the reasoning of the Cooperate Appellate Court that Order 7 Rule 7 bars the disputant from making an additional claim which has arisen pending adjudication of the dispute. In the circumstances and having regard to the fact that the refusal of amendment would drive the petitioner-society to another litigation in regard to virtually the same subject matter between the same parties, I am of the view that in order to avoid this multiplicity of litigation, the impugned order be set aside and the order of the Cooperative Court be restored.

7. Hence the impugned order is set aside and the amendment is allowed. The respondent is at liberty to make such appropriate applications for inspection etc. of the document as may be advised and shall also be at liberty to file appropriate reply to the amended portion. Amendment be carried out within a period of two weeks from today.

8. Rule is made absolute in the above terms.

(S. A.BOBDE,J.)